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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,764	09/21/1999	TIMOTHY J. MOULSLEY	PHB-34.288	3782

7590

03/26/2002

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EXAMINER

TRAN, TUAN A

ART UNIT

PAPER NUMBER

2684

DATE MAILED: 03/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/400,764

Applicant(s)

MOULSLEY, TIMOTHY J.

Examiner

Tuan A Tran

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 September 1999.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-5 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5 and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 2684

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulbert (5,713,074).

Regarding claims 2-5, Hulbert discloses a mobile radio system, particularly in the CDMA system wherein traffic information is transferred in unit over a wireless digital communication link between a transmitting station and a receiving station that comprises the steps of transmitting first information units which are data frames at a first power level, monitoring by the transmitting station based on information provided by the receiving station if correct reception of transmitted units occurred, and transmitting the second information units which also are data frames at a second power level which is greater than the first power station if the monitoring did not indicate correct reception occurred (See fig. 2, col. 1 lines 5-20, and col. 2 line 45 to col. 4 line 18). However, Hulbert does not mention that the content of the second information units is the same as the content of the first information units, and the first power level is selected to be the lowest one corresponding to a maximum allowable probability of failed first information

Art Unit: 2684

units transmission. It is well known in telecommunication field that all transmitters have the minimum and maximum power levels at which they can transmit signal and lowest transmitted power level corresponds to a maximum allowable probability of fails.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the system as disclosed by Hulbert modified such that the content of second information units is the same as the first one in order to allow the receiving station to receive properly data. Also, the first power level is selected to be the lowest level for the advantage of saving power because the battery power at the mobile unit is a limited resource and needs to be conserved, and further decreasing the level of channel interference.

2. Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulbert (5,713,074) in view of Agrawal et al. (5,722,051).

Regarding claims 8-13, Hulbert discloses as cited in claims 2-5. However, Hulbert does not mention that the first power level is selected to control the average power consumption at the transmitter at minimum average power consumption taking into account the first and second power levels for the consequent probability of transmission of second information unit. Agrawal discloses a mobile radio system that comprises means of selecting the first power level to minimize the power used in transmitting (See fig. 1 and col. 5, lines 16-35). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the system

Art Unit: 2684

as disclosed by Hulbert modified by Agrawal for the advantage of conserving the limited power resource at the mobile unit.

Claim 14 is rejected for the same reasons as set forth in claims 8-13, as method.

### ***Response to Arguments***

Applicant's arguments filed January 23, 2002 have been fully considered but they are not persuasive.

a. The Applicant argued that Hulbert does not disclose the first power level is selected to be the lowest level to correspond to a maximum allowable probability of failed first information units transmission and consequent second information units transmission and these features are nowhere taught, nor would they have been obvious to one of ordinary skill in the art at the time the invention was made (See Remark page 8 third paragraph, page 9 second paragraph). The Examiner agrees with the Applicant that Hulbert does not mention that the first power level is selected to be the lowest one corresponding to a maximum allowable probability of failed first information units transmission and consequent second information units transmission. However, it is well known in telecommunication field that all transmitters have the minimum and maximum power levels at which they can transmit signal and lowest transmitted power level corresponds to a maximum allowable probability of fails. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the first transmitted power level to be the lowest one for the advantage of saving battery

power because battery power at the mobile unit is a limited resource and needs to be conserved, and further decreasing the level of channel interference. For that reason, the Examiner respectfully disagrees with the Applicant's argument.

b. The Applicant argued that Agrawal does not suggest that the first power level is selected to control the average power consumption of the transmitter in order to maintain a minimum average power consumption and quality of service is minimized in Agrawal not average power consumption (See Remark page 10 second and third paragraphs). The Examiner respectfully disagrees with the Applicant's argument because Agrawal does suggest that power levels inherently including first power level are selected to control the average power consumption of the transmitter in order to maintain a minimum average power consumption not the quality of service (See col. 5 lines 24-35).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 2684

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan Tran** whose telephone number is **(703) 605-4255**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Daniel Hunter**, can be reached at **(703) 308-6732**.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**


**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.



Tuan Tran



DANIEL HUNTER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

Application/Control Number: 09/400,764

Page 7

Art Unit: 2684

AU 2684